

Procurements Made Through Group Buying Services

Purpose:

This instruction sets forth the policy for procurement responsibilities of School Food Authorities (SFAs), school cooperatives and other Child Nutrition Program outlets that belong to group buying services, such as Hospital Purchasing Service (HPS).

Scope:

Sponsors participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), and/or Summer Food Service Program (SFSP).

Description:

Questions have arisen concerning the procurement responsibilities of School Food Authorities (SFAs), school cooperatives and other Child Nutrition Program outlets that belong to group buying services, such as Hospital Purchasing Service (HPS). HPS is a nonprofit organization that has SFAs and school cooperatives among its members. As such, SFAs and school cooperatives may purchase goods and services through HPS. HPS in turn contracts with various suppliers. Since HPS is not a recipient or sub-recipient of Federal funds, nor a procurement agent for either a recipient or sub-recipient of Federal funds, the procurement requirements of 7 CFR Parts 3016 and 3019 do not apply to HPS' acquisition of suppliers. However, these requirements do always apply to SFAs, school cooperatives and any other Child Nutrition Program outlets, regardless of HPS membership. For the remainder of this memorandum, we will use the term CNP participant to include SFAs, school cooperatives and all other CNP outlets.

CNP participants may purchase goods and services through group buying services like HPS in several ways, including:

1. Becoming a member of the group buying service;
2. Formally contracting with the group buying service for it to act as either a procurement agent or a supplier of goods and services;
3. Participating in a State-procured contract with the group buying service, for it to act as either a procurement agent or a supplier of goods and services.

The first option is probably the most commonly used. Since membership fees are usually minimal amounts, no procurement procedures need to be employed in order to become a member of a group buying service. However, a CNP participant must always conduct a competitive procurement solicitation before it purchases anything from the group buying service or its suppliers.

For formal procurements, either the sealed bid or competitive negotiation method must be used. In either case, the solicitation documents must identify the CNP participant's membership in the buying service and state its intention to purchase from that organization or its suppliers when their offer is the most responsive. The goods or services provided through the buying service must precisely meet the specifications in the solicitation. The buying service must agree to comply with all terms and conditions of the solicitation and resulting contract. Any price adjustments must not exceed the adjustment factor (if any) in the solicitation.

For informal procurements, which fall under the small purchase threshold, this means contacting other suppliers to obtain price comparisons. Written quotes are preferred, with verbal quotes confirmed in writing.

In short, bids or quotes from other potential contractors cannot be rejected in order to purchase through the buying service, unless it or its suppliers truly offer the best price. Regardless of the supplier or suppliers used, when a CNP participant's small purchases for a single item or related group of items exceeds the small purchase threshold in a one-year period, the participant must aggregate the purchases and conduct a formal procurement in the following year.

The second option requires a formal competitive procurement resulting in a contract. To be considered for a contract award, the buying service would respond to the solicitation, just as any other interested supplier would respond. The CNP participant would evaluate the buying service's response, using the same procedures and evaluation criteria for all potential contractors. To meet responsiveness requirements, the goods or services provided through the buying service must precisely meet the specifications in the solicitation. Since contract pricing methods cannot be established by potential contractors, the CNP participant must state the contract cost method (fixed price or cost reimbursable, with or without a fixed fee) that it will use. A buying service or other potential contractor must accept the contract pricing method that was established by the CNP participant.

The third option permits CNP participants to "piggyback" on an existing State agency contract with a buying service. The State-procured contract must include the CNP participants in question (for example, SFAs and school cooperatives), either explicitly or because they belong to the class that is covered by the contract. In a given situation, this could mean that public school districts qualify, but not private schools and institutions.

No matter which procurement option it chooses to use, a CNP participant may not enter into or extend a contract to purchase any item whose price will change on a cost plus percentage basis.

Child Nutrition Program participants must check their contracts with HPS or similar organizations for cost plus percentage of cost or cost plus percentage of income provisions. Corrective action must be implemented by all nonschool CNP participants by the beginning of Federal Fiscal Year 2003 (October 1, 2002) and by all School Food Authorities and school cooperatives by School Year 2002-2003 (July 1, 2002). After these dates, the costs of continued purchases under cost plus percentage contracts cannot be funded from the nonprofit food

service account. In accordance with 3016.36(c) and 3019.43, it is vital that all procurement transactions be conducted in a manner providing free and open competition. This principle fully applies to purchases made through group buying services.

SOURCE: FY 02 SCHOOL AND COMMUNITY NUTRITION PROGRAMS POLICY
MEMORANDUM #02-02, FY 2002 CHILD AND ADULT CARE FOOD PROGRAM POLICY
MEMORANDUM #5, FY 2002 SUMMER FOOD SERVICE PROGRAM POLICY
MEMORANDUM #02-3.